

solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) **CONTENT OF SOLICITATION.**—If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed \$10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerors is capable of providing the services required at the level of quality required.

(3) **NONAPPLICATION.**—Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

(g) **CONTRACT MODIFICATIONS.**—

(1) **INCREASE IN SCOPE, PERIOD, OR MAXIMUM VALUE OF CONTRACT ONLY BY MODIFICATION OF CONTRACT.**—A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) **USE OF COMPETITIVE PROCEDURES.**—Unless use of procedures other than competitive procedures is authorized by an exception in subsection (a) of section 3204 of this title and approved in accordance with subsection (e) of such section, competitive procedures shall be used for making such a modification.

(3) **NOTICE.**—Notice regarding the modification shall be provided in accordance with section 1708 of title 41 and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(h) **CONTRACT EXTENSIONS.**—

(1) **WHEN CONTRACT MAY BE EXTENDED.**—Notwithstanding the limitation on the contract period set forth in subsection (c) or in a solicitation or contract pursuant to subsection (f), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) **LIMIT OF ONE EXTENSION.**—A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(i) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3251, §2304b; amended Pub. L. 111-350, §5(b)(13), Jan. 4, 2011, 124 Stat. 3843; renumbered §3405 and amended Pub. L. 116-283, div. A, title XVIII, §1820(d), Jan. 1, 2021, 134 Stat. 4192; Pub. L. 117-81, div. A, title XVII, §1701(b)(8)(C), Dec. 27, 2021, 135 Stat. 2133.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1820(d)(1), (2), renumbered section 2304b of this title as this section, moved subsec. (i) to the beginning of the section and redesignated it as (a), and redesignated former subsecs. (a) to (h) as (b) to (i), respectively.

Subsec. (b)(1). Pub. L. 116-283, §1820(d)(3), substituted “section 3406” for “section 2304c” and “section 3401” for “section 2304d”.

Subsec. (e). Pub. L. 116-283, §1820(d)(4)(A), (B), as amended by Pub. L. 117-81, §1701(b)(8)(C), inserted par. headings, substituted “section 3403(b)” for “section 2304a(b)” in par. (1), and realigned margin of par. (2).

Subsec. (f). Pub. L. 116-283, §1820(d)(5), inserted par. headings and realigned margins of pars. (2) and (3).

Subsec. (g)(1). Pub. L. 116-283, §1820(d)(6)(A), inserted heading.

Subsec. (g)(2). Pub. L. 116-283, §1820(d)(6)(B), (C), inserted heading, realigned margin, and substituted “subsection (a) of section 3204” for “subsection (c) of section 2304” and “subsection (e)” for “subsection (f)”.

Subsec. (g)(3). Pub. L. 116-283, §1820(d)(6)(B), (D), inserted heading and realigned margin.

Subsec. (h)(1). Pub. L. 116-283, §1820(d)(7)(A), (B), inserted heading, and substituted “subsection (c)” for “subsection (b)” and “subsection (f)” for “subsection (e)”.

Subsec. (h)(2). Pub. L. 116-283, §1820(d)(7)(C), inserted heading and realigned margin.

2011—Subsecs. (c), (f)(3). Pub. L. 111-350 substituted “section 1708 of title 41” for “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 8752 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or

chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

§ 3406. Task and delivery order contracts: orders

(a) **APPLICABILITY.**—This section applies to task and delivery order contracts entered into under sections 3403 and 3405 of this title.

(b) **ISSUANCE OF ORDERS.**—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 1708 of title 41 or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (c), a competition (or a waiver of competition approved in accordance with section 3204(e) of this title) that is separate from that used for entering into the contract.

(c) **MULTIPLE AWARD CONTRACTS.**—When multiple task or delivery order contracts are awarded under section 3403(d)(1)(B) or 3405(f) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of \$2,500 that is to be issued under any of the contracts unless—

(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis;

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee; or

(5) the task or delivery order satisfies one of the exceptions in section 3204(a) of this title to the requirement to use competitive procedures.

(d) **ENHANCED COMPETITION FOR ORDERS IN EXCESS OF \$5,000,000.**—In the case of a task or delivery order in excess of \$5,000,000, the requirement to provide all contractors a fair opportunity to be considered under subsection (c) is not met unless all such contractors are provided, at a minimum—

(1) a notice of the task or delivery order that includes a clear statement of the agency's requirements;

(2) a reasonable period of time to provide a proposal in response to the notice;

(3) disclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating such proposals, and their relative importance;

(4) in the case of an award that is to be made on a best value basis, a written statement documenting the basis for the award and the rel-

ative importance of quality and price or cost factors; and

(5) an opportunity for a post-award debriefing consistent with the requirements of section 3304 of this title.

(e) **STATEMENT OF WORK.**—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(f) **PROTESTS.**—(1) A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for—

(A) a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued; or

(B) a protest of an order valued in excess of \$25,000,000.

(2) Notwithstanding section 3556 of title 31, the Comptroller General of the United States shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

(g) **TASK AND DELIVERY ORDER OMBUDSMAN.**—

(1) **APPOINTMENT OR DESIGNATION AND RESPONSIBILITIES.**—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 3403(d)(1)(B) or 3405(f) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (c).

(2) **WHO IS ELIGIBLE.**—The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

(h) **ARCHITECTURAL AND ENGINEERING SERVICES.**—

(1) **QUALIFICATION-BASED SELECTIONS REQUIRED.**—Task or delivery orders for architectural and engineering services issued under section 3403 or 3405 of this title shall be qualification-based selections executed in accordance with chapter 11 of title 40.

(2) **MULTIPLE AWARD CONTRACTS.**—When issuing a task or delivery order for architectural and engineering services under a multiple award contract, the head of an agency may not routinely request additional information relating to qualifications from the contractor for such multiple award contract.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3252, §2304c; amended Pub. L. 110-181, div. A, title VIII, §843(a)(2), Jan. 28, 2008, 122 Stat. 237; Pub. L. 111-350, §5(b)(14), Jan. 4, 2011, 124 Stat. 3843; Pub. L. 111-383, div. A, title VIII, §825, title X, §1075(f)(5)(A), Jan. 7, 2011, 124 Stat. 4270, 4376; Pub. L. 112-239, div. A, title VIII, §830, Jan. 2, 2013, 126 Stat. 1842; Pub. L. 114-328, div. A, title VIII, §§825(b), 835(a), Dec. 23, 2016, 130 Stat. 2280, 2285; renumbered §3406 and amended Pub. L. 116-283, div. A, title XVIII, §1820(e), Jan. 1, 2021, 134 Stat. 4194; Pub. L. 117-263, div. A, title VIII, §802, Dec. 23, 2022, 136 Stat. 2693.)

Editorial Notes**PRIOR PROVISIONS**

Prior sections 3441 and 3442 were repealed by Pub. L. 96-513, title II, § 207, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

Section 3441, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, provided that temporary appointments be made only in the Army without specification of component.

Section 3442, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, provided that a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed, based upon ability and efficiency with regard being given to seniority and age, in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. See section 601 of this title.

A prior section 3443, act Aug. 10, 1956, ch. 1041, 70A Stat. 196, related to grade of appointment of reserve commissioned officers on active duty, prior to repeal by Pub. L. 85-861, § 36B(6), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 3444 and 3445 were repealed by Pub. L. 96-513, title II, § 207, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

Section 3444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85-861, § 1(81)(A), 72 Stat. 1480, authorized the President, in time of war or national emergency, to appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary grade, provided for vacation of the appointment, and permitted, for purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, an officer of the Medical Corps or Dental Corps who is appointed in a temporary grade to be credited, when he enters active duty, with constructive service authorized by section 3294(b) of this title. See section 603 of this title.

Section 3445, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85-861, § 1(81)(B), 72 Stat. 1480, provided that in addition to the temporary appointments authorized, in time of war or national emergency, a regular officer or a reserve warrant officer may be appointed in any temporary grade higher than his regular or reserve grade, without vacating that grade, or a person who holds no commissioned grade in the Regular Army be appointed in any temporary commissioned grade. See section 603 of this title.

A prior section 3446 was renumbered section 7176 of this title.

Prior sections 3447 to 3449 were repealed by Pub. L. 96-513, title II, §§ 207, 208, title VII, § 701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

Section 3447, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85-861, § 1(81)(D), 72 Stat. 1480; Sept. 28, 1971, Pub. L. 92-129, title VI, § 602, 85 Stat. 361, provided that temporary appointment of a person be made without reference to any other appointment that he may hold in the Army, temporary appointments of commissioned officers in the Regular Army be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades of lieutenant colonel and above, temporary appointments of commissioned officers in the reserve components of the Army be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades above major, and that the President may vacate at any time a temporary appointment in a commissioned grade. See section 601 of this title.

Section 3448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 197; Aug. 8, 1958, Pub. L. 85-603, § 1(2), 72 Stat. 526, authorized the Secretary of the Army, upon his determination of need, to appoint qualified persons as warrant officers, with such appointments to continue at the pleasure of the Secretary, and such warrant officers entitled to count all periods of active duty under the appointment as warrant or enlisted service for all purposes and to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Army on active duty. See section 602 of this title.

Section 3449, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that temporary promotions in warrant officer grades be governed by such regulations as the Secretary of the Army prescribe. See section 602 of this title.

A prior section 3450, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided for suspension of laws for promotion or mandatory retirement or separation during war or emergency of temporary warrant officers of the Army, prior to repeal by Pub. L. 90-235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758.

AMENDMENTS

2022—Subsec. (h). Pub. L. 117-263 added subsec. (h).

2021—Pub. L. 116-283, § 1820(e)(1), (2), renumbered section 2304c of this title as this section, redesignated subsecs. (g), (a), (b), (c), (e), and (f) as (a), (b), (c), (e), (f), and (g), respectively, and reordered subsecs. accordingly.

Subsec. (a). Pub. L. 116-283, § 1820(e)(3), substituted “sections 3403 and 3405” for “sections 2304a and 2304b”.

Subsec. (b)(2). Pub. L. 116-283, § 1820(e)(4), substituted “subsection (c)” for “subsection (b)” and “section 3204(e)” for “section 2304(f)”.

Subsec. (c). Pub. L. 116-283, § 1820(e)(5)(A), which directed substitution of “section 3403(d)(1)(B) or 3405(f)” for “section 2304a(d)(1) or 2304b(c)”, was executed by making the substitution for “section 2304a(d)(1)(B) or 2304b(e)” in introductory provisions, to reflect the probable intent of Congress.

Subsec. (c)(5). Pub. L. 116-283, § 1820(e)(5)(B), substituted “section 3204(a)” for “section 2304(c)”.

Subsec. (d). Pub. L. 116-283, § 1820(e)(6)(A), substituted “subsection (c)” for “subsection (b)” in introductory provisions.

Subsec. (d)(5). Pub. L. 116-283, § 1820(e)(6)(B), substituted “section 3304” for “section 2305(b)(5)”.

Subsec. (g). Pub. L. 116-283, § 1820(e)(7), designated first and second sentences as pars. (1) and (2), respectively, and inserted headings and, in par. (1), substituted “section 3403(d)(1)(B) or 3405(f)” for “section 2304a(d)(1)(B) or 2304b(e)” and “subsection (c)” for “subsection (b)”.

2016—Subsec. (b)(5). Pub. L. 114-328, § 825(b), added par. (5).

Subsec. (e)(1)(B). Pub. L. 114-328, § 835(a), substituted “\$25,000,000” for “\$10,000,000”.

2013—Subsec. (e)(3). Pub. L. 112-239 struck out par. (3) which read as follows: “Paragraph (1)(B) and paragraph (2) of this subsection shall not be in effect after September 30, 2016.”

2011—Subsec. (a)(1). Pub. L. 111-350 substituted “section 1708 of title 41” for “section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416)”.

Subsec. (e). Pub. L. 111-383, § 1075(f)(5)(A), made technical correction to directory language of Pub. L. 110-181, § 843(a)(2)(C). See 2008 Amendment note below.

Subsec. (e)(3). Pub. L. 111-383, § 825, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “This subsection shall be in effect for three years, beginning on the date that is 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008.”

2008—Subsec. (d). Pub. L. 110-181, § 843(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110-181, § 843(a)(2)(C), as amended by Pub. L. 111-383, § 1075(f)(5)(A), added subsec. (e) and struck out former subsec. (e). Former text read as follows: “A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.”

Pub. L. 110-181, § 843(a)(2)(A), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 110-181, § 843(a)(2)(A), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2021 AMENDMENT**

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title VIII, §843(a)(3)(B), Jan. 28, 2008, 122 Stat. 238, provided that: “The amendments made by paragraph (2) [amending this section] shall take effect on the date that is 120 days after the date of the enactment of this Act [Jan. 28, 2008], and shall apply with respect to any task or delivery order awarded on or after such date.”

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 8752 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103-355, set out as a note preceding section 3401 of this title.

CHAPTER 247—PROCUREMENT OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

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|---|--|
| Sec.
3451.
3452.
3453.
3455.
3456.
3457.
3458. | Definitions.
Relationship of other provisions of law to procurement of commercial products and commercial services.
Preference for commercial products and commercial services.
Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress.
Commercial product and commercial service determinations by Department of Defense.
Treatment of certain products and services as commercial products and commercial services.
Authority to acquire innovative commercial products and commercial services using general solicitation competitive procedures. |
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Editorial Notes**PRIOR PROVISIONS**

A prior chapter 247 “ACQUISITION OF COMMERCIAL ITEMS”, as added by Pub. L. 115-232, div. A, title VIII, §801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3451, was repealed by Pub. L. 116-283, div. A, title XVIII, §1821(a)(1), Jan. 1, 2021, 134 Stat. 4194.

AMENDMENTS

2021—Pub. L. 117-81, div. A, title VIII, §803(b)(2), Dec. 27, 2021, 135 Stat. 1816, added item 3458.

Pub. L. 116-283, div. A, title XVIII, §1821(a)(1), (3), (b)(1)(B), (7)(C), Jan. 1, 2021, 134 Stat. 4194-4196, transferred chapter 140 of this title to this chapter, renumbered items 2375, 2376, 2377, 2379, 2380, and 2380a as 3452, 3451, 3453, 3455, 3456, and 3457, respectively, moved item 3451 so as to precede item 3452, and struck out item 2380b “Treatment of commingled items purchased by contractors as commercial products”.

Statutory Notes and Related Subsidiaries**PROCUREMENT OF COMMERCIAL SERVICES**

Pub. L. 110-181, div. A, title VIII, §805, Jan. 28, 2008, 122 Stat. 212, as amended by Pub. L. 110-417, [div. A], title X, §1061(b)(4), Oct. 14, 2008, 122 Stat. 4613; Pub. L. 113-291, div. A, title X, §1071(b)(2)(A), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115-232, div. A, title VIII, §836(f)(6), Aug. 13, 2018, 132 Stat. 1871, provided that:

“(a) **REGULATIONS REQUIRED.**—Not later than 180 days after the date of the enactment of this Act [Jan. 28, 2008], the Secretary of Defense shall modify the regulations of the Department of Defense for the procurement of commercial services for or on behalf of the Department of Defense.

“(b) **APPLICABILITY OF COMMERCIAL PROCEDURES.**—

“(1) **SERVICES OF A TYPE SOLD IN MARKETPLACE.**—The regulations modified pursuant to subsection (a) shall ensure that services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial services for purposes of section 2306a of title 10, United States Code [see 10 U.S.C. 3701 et seq.] (relating to truth in negotiations), only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such services.

“(2) **INFORMATION SUBMITTED.**—To the extent necessary to make a determination under paragraph (1), the contracting officer may request the offeror to submit—

“(A) prices paid for the same or similar commercial services under comparable terms and conditions by both government and commercial customers; and

“(B) if the contracting officer determines that the information described in subparagraph (A) is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

“(c) **TIME-AND-MATERIALS CONTRACTS.**—

“(1) **COMMERCIAL SERVICES ACQUISITIONS.**—The regulations modified pursuant to subsection (a) shall ensure that procedures applicable to time-and-materials contracts and labor-hour contracts for commercial service acquisitions may be used only for the following:

“(A) Services procured for support of a service, as described in section 103a(1) of title 41, United States Code.

“(B) Emergency repair services.

“(C) Any other commercial services only to the extent that the head of the agency concerned approves a determination in writing by the contracting officer that—

“(i) the services to be acquired are commercial services as defined in section 103a(2) of title 41, United States Code;

“(ii) if the services to be acquired are subject to subsection (b), the offeror of the services has submitted sufficient information in accordance with that subsection;

“(iii) such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

“(iv) the use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

“(2) **NON-COMMERCIAL SERVICES ACQUISITIONS.**—Nothing in this subsection shall be construed to preclude the use of procedures applicable to time-and-materials contracts and labor-hour contracts for non-commercial service acquisitions for the acquisition of any category of services.”

PLAN FOR RESTRICTING GOVERNMENT-UNIQUE CONTRACT CLAUSES ON COMMERCIAL CONTRACTS

Pub. L. 110-181, div. A, title VIII, §821, Jan. 28, 2008, 122 Stat. 226, as amended by Pub. L. 113-291, div. A, title X, §1071(b)(2)(B), Dec. 19, 2014, 128 Stat. 3506; Pub. L. 115-232, div. A, title VIII, §836(f)(3), Aug. 13, 2018, 132 Stat. 1871; Pub. L. 116-92, div. A, title IX, §902(41), Dec. 20, 2019, 133 Stat. 1547, provided that:

“(a) PLAN.—The Under Secretary of Defense for Acquisition and Sustainment shall develop and implement a plan to minimize the number of government-unique contract clauses used in commercial contracts by restricting the clauses to the following:

“(1) Government-unique clauses authorized by law or regulation.

“(2) Any additional clauses that are relevant and necessary to a specific contract.

“(b) COMMERCIAL CONTRACT.—In this section:

“(1) The term ‘commercial contract’ means a contract awarded by the Federal Government for the procurement of a commercial product or a commercial service.

“(2) The term ‘commercial product’ has the meaning provided by section 103 of title 41, United States Code.

“(3) The term ‘commercial service’ has the meaning provided by section 103a of title 41, United States Code.”

§ 3451. Definitions

In this chapter:

(1) The terms “commercial product”, “commercial service”, “nondevelopmental item”, “component”, and “commercial component” have the meanings provided in sections 103, 103a, 110, 105, and 102, respectively, of title 41.

(2) The term “head of an agency” means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term “agency” means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103-355, title VIII, §8103, Oct. 13, 1994, 108 Stat. 3390, §2376; amended Pub. L. 107-107, div. A, title X, §1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 111-350, §5(b)(22), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 115-232, div. A, title VIII, §836(d)(2), Aug. 13, 2018, 132 Stat. 1866; renumbered §3451 and amended Pub. L. 116-283, div. A, title XVIII, §1821(a)(2), (b)(1)(A), Jan. 1, 2021, 134 Stat. 4195.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3451, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that an officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion, prior to repeal by Pub. L. 96-513, title II, §207, title VII, §701, Dec. 12, 1980, 94 Stat. 2884, 2955, effective Sept. 15, 1981.

AMENDMENTS

2021—Pub. L. 116-283, §1821(b)(1)(A), transferred this section so as to precede section 3452 and appear at the beginning of this chapter.

Pub. L. 116-283, §1821(a)(2), renumbered section 2376 of this title as this section.

2018—Par. (1). Pub. L. 115-232 substituted “terms ‘commercial product’, ‘commercial service’,” for

“terms ‘commercial item’,” and “sections 103, 103a, 110, 105, and 102, respectively, of title 41” for “chapter 1 of title 41”.

2011—Par. (1). Pub. L. 111-350 substituted “chapter 1 of title 41” for “section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)”.

2002—Par. (2). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

2001—Par. (1). Pub. L. 107-107 inserted “(41 U.S.C. 403)” after “section 4 of the Office of Federal Procurement Policy Act”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

§ 3452. Relationship of other provisions of law to procurement of commercial products and commercial services

(a) APPLICABILITY OF GOVERNMENT-WIDE STATUTES.—(1) No contract for the procurement of a commercial product or commercial service entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(b) of title 41.

(2) No subcontract under a contract for the procurement of a commercial product or commercial service entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1906(c) of title 41.

(3) No contract for the procurement of a commercially available off-the-shelf item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation pursuant to section 1907 of title 41.

(b) APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of defense-unique provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercial products and commercial services. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to purchases of commercial products and commercial services by the Department of Defense. This section does not render a provision of law or contract clause requirement not

included on the list inapplicable to contracts for the procurement of commercial products and commercial services.

(2) A provision of law or contract clause requirement described in subsection (e) that is enacted after October 13, 1994, shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.

(c) **APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES.**—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on government-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to subcontracts under a Department of Defense contract or subcontract for the procurement of commercial products and commercial services. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to those subcontracts. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to subcontracts under a contract for the procurement of commercial products and commercial services.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt subcontracts under a contract for the procurement of commercial products and commercial services from the applicability of the provision or contract clause requirement.

(3) In this subsection, the term “subcontract” includes a transfer of commercial products and commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor. The term does not include agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Department of Defense and other parties and are not identifiable to any particular contract.

(4) This subsection does not authorize the waiver of the applicability of any provision of law or contract clause requirement with respect to any first-tier subcontract under a contract with a prime contractor reselling or distributing commercial products and commercial services of another contractor without adding value.

(d) **APPLICABILITY OF DEFENSE-UNIQUE STATUTES TO CONTRACTS FOR COMMERCIALLY AVAILABLE, OFF-THE-SHELF ITEMS.**—(1) The Defense Federal Acquisition Regulation Supplement shall include a list of provisions of law and of contract clause requirements based on govern-

ment-wide acquisition regulations, policies, or executive orders not expressly authorized in law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. A provision of law or contract clause requirement properly included on the list pursuant to paragraph (2) does not apply to Department of Defense contracts for the procurement of commercially available off-the-shelf items. This section does not render a provision of law or contract clause requirement not included on the list inapplicable to contracts for the procurement of commercially available off-the-shelf items.

(2) A provision of law or contract clause requirement described in subsection (e) shall be included on the list of inapplicable provisions of law and contract clause requirements required by paragraph (1) unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exempt contracts for the procurement of commercially available off-the-shelf items from the applicability of the provision or contract clause requirement.

(e) **COVERED PROVISION OF LAW OR CONTRACT CLAUSE REQUIREMENT.**—A provision of law or contract clause requirement referred to in subsections (b)(2), (c)(2), and (d)(2) is a provision of law or contract clause requirement that the Under Secretary of Defense for Acquisition and Sustainment determines sets forth policies, procedures, requirements, or restrictions for the procurement of property or services by the Federal Government, except for a provision of law or contract clause requirement that—

(1) provides for criminal or civil penalties;

(2) requires that certain articles be bought from American sources pursuant to section 4862 of this title, or requires that strategic materials critical to national security be bought from American sources pursuant to section 4863 of this title; or

(3) specifically refers to this section and provides that, notwithstanding this section, it shall be applicable to contracts for the procurement of commercial products and commercial services.

(Added Pub. L. 103-355, title VIII, §8102, Oct. 13, 1994, 108 Stat. 3390, §2375; amended Pub. L. 105-85, div. A, title X, §1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107-107, div. A, title X, §1048(a)(18), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 111-350, §5(b)(21), Jan. 4, 2011, 124 Stat. 3844; Pub. L. 114-328, div. A, title VIII, §874(a), Dec. 23, 2016, 130 Stat. 2308; Pub. L. 115-232, div. A, title VIII, §§836(d)(1), (8)(B), 837(a), Aug. 13, 2018, 132 Stat. 1866, 1868, 1875; Pub. L. 116-92, div. A, title IX, §902(57), Dec. 20, 2019, 133 Stat. 1549; renumbered §3452 and amended Pub. L. 116-283, div. A, title XVIII, §§1821(a)(2), (b)(2), 1870(c)(6)(A), Jan. 1, 2021, 134 Stat. 4195, 4285.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3452, added Pub. L. 85-861, §1(81)(E), Sept. 2, 1958, 72 Stat. 1480, provided that, notwithstanding any other provision of law, an officer of Medical Corps or Dental Corps may be promoted to tem-